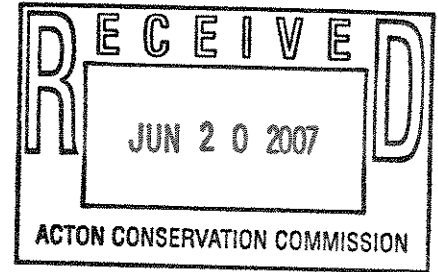


8 Spring Hill Road Development Proposal  
*Neighborhood Group Concerns*

To: Town of Acton Conservation Commission  
From: Concerned Neighbors in the Spring Hill Road Area

June 6, 2007



RE: Notice of Intent for Lots 2C & 3 Spring Hill Road, Map E6, Parcel 6-3  
Acton, MA

Applicant: Jeanson Homes  
Owners: William and Deanne Angell

This document represents the views of a group of concerned abutters to and neighbors of lots 2C and 3 at #8 Spring Hill Road regarding the proposed development of these properties by Jeanson Homes.

**NON-COMPLIANCE:** It is our view that the proposed Notice of Intent for the subject property's development is not in compliance with the Town of Acton Wetland Protection Bylaws, and therefore should be denied, for a number of reasons.

First among these is that the Application does not meet the wetlands buffer requirements set forth in the Acton Wetlands Preservation Bylaw, and does not qualify as a Limited Project. As a result, the proposed work cannot be undertaken without waivers from the Conservation Commission. These waivers must be requested at the time of filing, but the applicant has failed to request them.

The Bylaw states that the Commission may, at its discretion, grant a waiver when "such action is in the public interest and is consistent with the intent and purpose of the Bylaw". Given that the purpose and intent of the Bylaw is to "protect wetlands...(and) adjoining buffers ..." by means of "controlling activities deemed to have a significant impact upon wetland interests", there is no public benefit in altering the wetlands to allow access to a small uplands portion of the lot, nor in the clearing of a heavily wooded upland area to allow development.

**ORIGINAL OVERSIZE LOT DESIGNED TO PROTECT WETLANDS:** This lot was part of the original Spring Hill Road subdivision of 1965, and was until 1995 covered by a 30-year deed restriction against subdivision, as were all other lots on Spring Hill Road. All of the lots in the Spring Hill Road subdivision were required to maintain at least 4 acres of land for each parcel, implicitly recognizing the value of an area that is rich in natural resources, and the adverse impact that over-development would have on it.

The original lot contained a single house with single driveway access from Spring Hill Road. This oversized lot was originally created with 7+ acres for the specific purpose of protecting its extensive wetland areas. It was recently subdivided, using the Approval-Not-Required procedure, into a 2+ acre lot for the original house and the subject wetland parcel with lots 2c&3. This was done without consideration for the amount of wetland contained in these lots.

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PRIOR DECISION: A very similar application by the owners, the Angells, for developing this parcel was denied eight years ago. They have waited the statutory period before submitting substantially the same proposal again, despite the ruling given by this Commission that they would not be entitled to infringe on the wetland to develop the remaining lots. It should be noted that the Angells remain the current owner of the property, and that Jeanson Homes is acting as an agent in this application.

The current application has a number of significant similarities to the denied application, including the fact that:

1. This is an inappropriate development within a marginal upland portion of the Applicant's property that is surrounded by significant wetland resource areas.
2. Virtually the entire project is within the 100-foot buffer zone of the wetlands resource area.
3. The driveway portion represents structure within the 50-foot no-build buffer zone. The Applicant claims that no waivers from Section 1.5 of the Wetland Protection Bylaw Rules and Regulations (or from Section F4.6 of the Bylaw itself) are necessary for the proposed driveway.

The prior proposal was denied based on a number of conclusions, but key among them were the following:

1. "The project does not meet the thresholds for a Limited Project."

This was determined to be the case because:

- a. "The developable upland portion is small relative to the wetlands,
- b. The site has other special attributes, especially for wildlife habitat, because of its history of protection, and connection to adjacent Conservation land."
2. The Commission also found no merit in the applicants' claim of hardship, both because a house already exists on the original property, and because a conservation restriction was in place when the applicant bought the property.
3. "The project cannot be conditioned to meet the performance standards to protect the interests of the Act and the Bylaw... Much of the project is within the 100 foot Buffer Zone of a significant wetland resource area."

All of these conclusions remain true today.

In 1999, the disturbance of two species of "special concern" on the lot was also cited in the decisions. These species (the Mystic Valley Amphipod and spotted turtle) are still present, but have since been dropped from the rare species list in Massachusetts. However, the Commission denied the application, even though the applicant made three revisions to the site plan in order to avoid the affected habitat. This demonstrates that the

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Commission had determined that the remaining factors were still sufficient cause to deny the application.

DIFFERENCES BETWEEN CURRENT APPLICATION AND LAST APPLICATION:  
The current proposal differs in four significant ways from the prior proposal, all of which make it even less suitable for development.

1. The first difference is that the wetland buffer setbacks in the Acton Bylaws have been increased since 1999. The prior proposal already encroached on the wetlands buffers significantly; this proposal encroaches on a substantially larger portion of the newly-defined buffer zones.

The residents of Acton have indicated by their support of these larger buffers that they believe it is in the public interest to give the wetlands even stronger protection than that afforded by the DEP regulations alone.

2. Second, there is a different configuration for the driveway. The first proposal utilized an initial section the existing driveway for #8, and extended it into the upland area. The new proposal requires laying a new driveway within the wetland buffer zone all the way from Spring Hill Road. The majority of the proposed driveway is within the 50 foot no-build buffer.

The proposed location for the entry point of this additional driveway is adjacent to a firepond that is used by the Acton Fire Department to refill pump engines during fires in the neighborhood.

DEP regulations require that the firepond be treated as a body of water, because it is designed to be, and has been, a perennial source of fresh water except in a period of extreme drought. This does not disqualify it from certification as a body of water, as allowed in the regulations. Therefore, the size of the buffer margin around it should be those set for a body of water, at 100 feet.

3. The third difference is that the applicant proposes two wetland replication areas at the base of the upland, on the far side of the wetland crossing. However, the DEP Wetland Replication Guidelines mandate that the wetland replication be completed and certified as compliant before any construction begins. Therefore, neither the driveway nor the crossing may be installed prior to the wetland replication. This necessitates crossing the wetland with minimum disturbance, which the guidelines require the applicant accomplish by requiring that all work be done in winter when the ground is frozen.
4. The fourth is that in March of 2006 the MassDEP issued its guidance on wildlife habitat protection under the Massachusetts Wetland Protection Act. The guidance requires a formal evaluation of projects that may have an adverse effect on wetlands wildlife habitat, and advises Conservation Commissions to deny projects that will have an adverse effect on important features such as turtle nesting areas and beaver dens.

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The Oxbow Associates report prepared for an abutter, Cynthia Harvey, for the 1999 Application indicated that the wetlands are estimated habitat for the spotted turtle, which uses adjacent upland areas for nesting. In addition, in the prior hearing, the applicant's representative reported that the BVW had increased at the western area of the site, and attributed this to possible beaver activity. According to the Wildlife Habitat Protection Guidance, a beaver den is required to be protected with a 100-foot buffer zone.

**LIMITED UPLAND AREA:** As can be seen from the newly-created lots and delineated wetlands, the total parcel is largely one contiguous wetland, with a small portion of upland at the rear of the lot. In fact, more than 60% of the parcel is wetland, and the proposed houses themselves are situated directly on the 100 foot wetland buffer boundary, so that half of their area is inside the boundary.

In fact, several of the house walls and a deck are sited exactly on the 75-foot no-disturb buffer's boundary, an approach that is heavily reliant on the accuracy of the survey's plot plan. Of course, it would be virtually impossible for construction activity for these components not to intrude into the 75-foot buffer.

The applicant also proposes to elevate the upland to a height of 12 feet over the stream bank in order to site the houses and septic systems. This elevation process will involve depositing fill inside the 75-foot no-disturb buffer zone to create these steep grades. It should be noted that these components (the grades, the walls and the deck) are not part of the driveway, and so are not covered by any limited project's exemption from observing these buffers.

The project will also result in significantly steeper grades than exist on the present upland, and present the typical runoff and contamination problems normally associated with driveways, houses, septic systems and lawns, but in an accelerated form. While the applicant proposes recharge systems to avoid contaminating the surface of the wetlands, any contamination will only reach the water table more rapidly and so may affect downstream ecology and even the downstream wells of existing homes, without the beneficial filtering that wetlands normally provide.

**RARE SPECIES:** It is quite possible that the area contains estimated habitat for animals listed as rare species by the Massachusetts Natural Heritage and Endangered Species Program. In fact, one of three types of mole salamander listed as "species of special concern" by the Massachusetts DEP, the blue-spotted salamander, was identified on a parcel on South Street this year, within a mile of the subject property. Other mole salamanders believed to be Jefferson salamanders have been found and photographed on an abutter's property.

Because these salamanders breed in vernal pools and then migrate to uplands for the remainder of the year over distances up to a half a mile, the Natural Heritage and Endangered Species Program recommends protecting the entire area within a radius of

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between 250 and 1600 meters from any vernal pool. In the Carlisle property, an 800 foot radius was applied.

The size of this protected area means that even the identification of a vernal pool in an abutter's property outside the subject property within 800 feet of the boundary of the proposed construction would indicate that the uplands themselves should be protected as estimated habitat. In the past, three pools have been observed on the subject property that could be determined to be vernal pools, and subject to the 100-foot buffer zone protection.

ADDITIONAL IMPACTS: The proposal requires clearcutting in four areas: the upland area where the houses will be located and the septic systems situated, the wetland replication area along Spring Hill Road, a staging area to store construction materials and supplies, and the entire length of the proposed driveway and crossing with sufficient width to maneuver heavy machinery and to remove the trees. The applicant has not specified where the storage of fill and construction materials would take place. The upland area cannot be used to construct the driveway, since it will not yet be reachable.

Such clearcutting would subject trees from the core of the woods that had previously been sheltered to significantly larger wind forces than those under which they matured. This exposes them to the risk of large-scale damage when stressed by high winds.

In fact, shortly after a new septic system was installed on the original property, a severe wind burst in 2005 at the newly-created margin of the septic field caused five large, mature trees to fall onto an abutter's property, requiring extensive removal work and damaging a significant portion of the woodland habitat in the neighbor's lot. This damage is still visible today.

As a final point regarding clearcutting: In order to maneuver heavy equipment during construction of the proposed wetland replication area, it will be necessary to remove mature trees outside the boundary of the replication area. Therefore, the replication area will no longer be shaded by these trees; most of it will be exposed to full sun in summer, as will some of the wetlands adjacent to the stream as it exits the culvert on the opposite side of Spring Hill Road during spring and fall when the sun is at lower azimuth. It will therefore not serve all of the ecological functions of the existing wetlands, unless the shade is also replicated.

An additional effect which we believe the Commission should review is flooding. During development, heavy construction and roadlaying equipment will need both to pass over and to carry out work in the area between the current driveway and the firepond. These two features are separated by only 35 feet, including a bank whose width is about 5 feet, leaving only 30 feet of width for this work area. The possibility of disturbing or collapsing the firepond's bank is substantial. In addition, work on any area upstream is very likely to disturb material that will result in silt and disturbed sedimentary material being carried downstream towards Spring Hill Road. This is where both the culvert crossing Spring Hill Road and the firepond standpipe are located.

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If the standpipe used to serve fire engines became clogged with silt or disturbed sedimentary materials, it would become unusable in an emergency. Without special monitoring activity, this condition would remain undetected until the emergency occurred.

Also, the intake for the current culvert that passes under Spring Hill Road is located at the bank of the firepond. This intake could become obstructed, and because the spring is constantly active through fall, winter and spring, and intermittent only in summer, cause local flooding around the firepond and over Spring Hill Road even under normal conditions, which would further damage the surrounding habitats.

The proposal addresses the monitoring of the condition of neither the firepond culvert nor the standpipe, and so jeopardizes the safety of homes in the service area and the stability and preservation of the neighboring habitat.

**CONSERVATION VALUE:** By contrast, this lot has significant conservation value. It is part of a much larger wetland system in the Spring Hill area from which the area takes its name, with numerous streams and ponds, both intermittent and permanent. It forms part of a large drainage system the flows into Spencer Brook and finally into the Concord River. The Spring Hill Conservation area is home to many local species of wildlife and in the past has been identified as habitat for Massachusetts-listed rare species such the Mystic Valley Amphipod and the spotted turtle. It has also been cited as an ideal habitat for the four-toed salamander and the blue-spotted salamander, two amphibians listed as species of "special concern" by the Massachusetts Department of Environmental Protection. Both the upland and wetland portions are well-forested with a variety of species of pine, maple, ash, birch and oak trees.

**PRIORITIZED PARCEL:** The Town of Acton Open Space and Recreation Plan has recognized the importance of this specific parcel. In that plan, this property is listed as a "prioritized parcel" scoring 8/10 on the environment value of the land, and 7/10 on character. It is adjacent to the Spring Hill Conservation Area, and would be an excellent candidate for purchase by the Town using Community Preservation Act funds. (A similar parcel was purchased at Town Meeting with CPA funds this year. The owners received full-appraised value of the backland and the Town added to the protected conservation lands in Acton Center.)

**LOT NOT INTENDED FOR SUBDIVISION:** The original lot was designed with proper access to the upland portion where the existing house at 8 Spring Hill Road is located. The owners created an unbuildable parcel when the residence was recently sold. There was never any intention that this original lot should be subdivided in the original design.

**INTENTIONAL HARDSHIP:** The application has also cited this as a "limited project" under 310 CMR 10.53, in particular section 10.53(3)(e), concerning constructing new roadways or driveways. This allows for a crossing to an upland area across wetland if reasonable access is not available. However, it imposes restrictions regarding the use of available alternatives that would reduce the impact of the access, including utilizing access over an adjacent parcel of land formerly owned by the applicant.

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In fact, such access *was* available to the owners and was indeed used for the existing house lot at 8 Spring Hill Road. In subdividing, and creating an unbuildable parcel via the Approval-Not-Required subdivision process, the owners have *voluntarily* given up access to the upland portion of the newly created lots.

OTHER PRECEDENTS: The Commission denied a similar application, the Foss/Dexter NOI application for Lot C2 at 151 Pope Road. Both applications involve projects seeking to create additional lots from an existing, improved residential parcel. The Angell application involves even more significant alteration of the Buffer Zones of jurisdictional wetlands than Foss/Dexter. The Foss/Dexter application was denied even though it did not involve any wetland crossings. In that decision, the Commission determined that a waiver request under Section F4.6 of the Bylaw is not warranted in a situation where the benefit of the waiver inures solely to the Applicant, and where jurisdictional areas will suffer harm if such waiver were approved.

Finally, we are very concerned about the precedent that would be set in allowing this application. It would encourage owners of lots with small, isolated uplands located in a major wetland area to seek to build crossings in order to enhance the sales value of their property. It would also hamper the Commission's authority to deny such applications. Any such development would damage the dominant wetlands environments and also result in the loss of potential conservation lands for the use of the public.

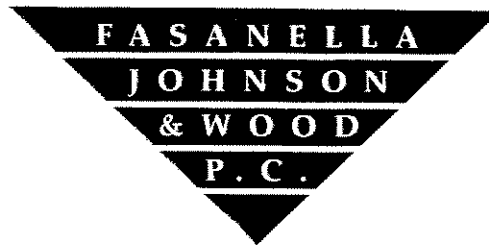
RECOMMENDATION: This is the second application, and the sixth site plan, that the applicant has submitted for developing this parcel. Given the volume of material that has been submitted about the proposed site, and the qualified legal and scientific opinions that have been offered, we believe the current NOI application does not merit further consideration.

We urge the Commission to close the public hearing on this NOI application and summarily vote to deny this project under the Commonwealth's Wetlands Protection Act and the Acton Wetland Protection Bylaw.

Taking this action will avoid setting a dangerous precedent, for the good of the environment in the Northeast corner of Acton and those downstream of its waters, and for the good of the Town as a whole.

Robert A. Fasanella  
Shephard S. Johnson, Jr.\*  
Glenn A. Wood

\*Also admitted in VT



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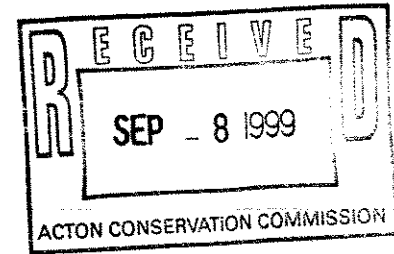
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September 8, 1999

Acton Conservation Commission  
Town Hall  
472 Main Street  
Acton, MA 01720



RE: Deanne Angell NOI Application  
8 Springhill Road, Acton

Dear Commission Members:

We are again submitting written comments on behalf of Laura Arnstein, Susan Mitchell-Hardt, David E. Hardt, Kimberly Appelmans, Jack Appelmans, Frederick D. Seward and Susan Seward, relative to the two Notice of Intent ("NOI") applications submitted by Deanne Angell for the property at 8 Springhill Road. We have just learned, on September 7, that the Applicant submitted revised plans for the second time to the Commission this past Friday afternoon, before the holiday weekend. Notwithstanding this eleventh hour filing of revised plans, the fatally flawed plans must be rejected under the Wetlands Protection Act, M.G.L. c.131, §40 (the "Act"), and the local Action Wetlands Protection Bylaw (the "Bylaw") without further hearing on this matter.

To date, the Commission has been quite accommodating to the Applicant's requests to continue the public hearings pending further comments from Massachusetts Natural Heritage Endangered Species Program ("MNHESP"). Nonetheless, at this time further public hearing relative to these project plans will not cure the fatal defects of the project, even as most-recently revised. The project cannot be approved given the direct alteration of Bordering Vegetated Wetland ("BVW") and the eradication of the buffer to the BVW, as well as the continued failure by the Applicant to demonstrate no adverse impact to not one, but two species of special concern.

A. The Proposed Direct Alteration of BVW For Roadway and Bridge Crossing Fail to Meet the Performance Standards Under the Act and the Bylaw.

1. The Additional Two-Lot Subdivision Fails to Qualify as Limited Project or Ensure That The Proposed Project Will Have No Adverse Effect.

Through the most recent project plans, the Applicant has shifted the driveway which is intended to serve the two proposed residential houses further away from the identified Mystic Valley Amphipod habitat.<sup>1</sup> Despite the altered location of the driveway, the proposed driveway

<sup>1</sup> It should be noted, however, that since June 1999, a Rare Species Observation Form was submitted by Oxbow Associates to MNHESP. In the July 26, 1999 MNHESP correspondence to the Commission reviewing the Angell



does not comply with the performance standards set forth in the Act and the Bylaw. If the Applicant seeks Commission approval of the driveway as a "limited project" under 310 CMR 10.53, approval of such is wholly within its discretion and is not mandatory. According to the Act's Regulations, at 310 CMR 10.53(3), in exercising its discretion:

[T]he issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in M.G.L. c.131, §40, the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified in M.G.L. c. 131, §40.  
310 CMR 10.53(3) (Emphasis supplied).

Here, the revised project plans still entail direct alteration of the BVW. Likewise, the revised plans include a crossing of an intermittent stream by a bridge, resulting in increased construction impacts resulting from the placement of the concrete bridge supports on either side of the intermittent stream. Further, consideration of reasonable alternatives would, of course, include a no-build alternative as the subject locus is already improved by the Angell house, driveway and accompanying septic system. Given the substantial wetlands existing on the property (with only marginal and very questionable developable land) and the fact that the Applicant already owns one residential house on this property, it is completely within the discretion of the Commission to flatly reject any further wetland alteration on this parcel.

Moreover, 310 CMR 10.53(3) expressly prohibits discretionary approval where a project will "have any adverse affect on specified habitat sites." In June 1999, Brian Butler of Oxbow Associates submitted to MNHESP a Rare Species Observation Form and it has been determined by MNHESP that the Spotted Turtle (*Clemmys guttata*) relies upon the involved wetland system. MNHESP in its second project review letter determined that this project would effect adversely not only the Mystic Valley Amphipod, but also the Spotted Turtle. Accordingly to MNHESP's July 26 correspondence, the Spotted Turtle's habitat extends beyond the Amphipod habitat, to the edge of the BVW. While the Applicant has since submitted revised plans which shift the driveway away from the Amphipod's habitat, the revised plans do not appear to identify or address the larger habitat of the Spotted Turtle. Given that MNHESP has indicated the habitat of the Spotted Turtle to extend to the edge of the BVW and the Applicant has not submitted any information to rebut this finding and to establish the performance standard of no adverse effect to the wildlife habitat, the MNHESP's finding that the project will adversely effect the Spotted Turtle prevents review of the project as a limited project under 310 CMR 10.59.

2. Proposed Replication of the Destroyed BVW Resource Area Does Not Comport with 310 CMR 10.55(4)(b).

The proposed replication area as shown on the revised plans do not adequately replicate the resource area that has been destroyed. The portion of the driveway located within the BVW is located between 199 and 200 feet elevation and is fed, at least in part by the intermittent stream, apparently flowing from the certified vernal pool located on the Angell property. In contrast, the replication area, which is located at the opposite end of the property is disconnected from the

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project, MNHESP stated that the habitat of the Spotted Turtle extended beyond the habitat of the Amphipod, to the BVW line. Likewise, it is well established that Spotted Turtles migrate between upland and wetland habitats. Despite the determination of Spotted Turtles within the wetland system at issue, the revised plans fail to depict habitat for the Spotted Turtle.

intermittent stream and is situated at only 195 to 196 feet elevation. Pursuant to 310 CMR 10.53(2), (3) and (4), proper replication requires that the elevation, configuration and location of the replacement area be approximately equal to the lost area. Further, Section 4.2 of the Bylaw's regulations require that the replication area be appropriately located so as to duplicate the functions of the altered wetland. Here, the revised plans fail to indicate whether these standards have or will be met by the replication.

B. As Recently Determined by the Commission, Eradication of the Buffer Zone Contradicts the Act, DEP Wetlands Program Policy 99-1 and the More Stringent Local Bylaw.

A brief review of the revised NOI plans reveals that the proposed houses, decks, garages, septic systems and driveway consumes nearly all available buffer and upland on the Angell property. Moreover, the project plans demonstrate the wipe-out of the entirety of the buffer area just beyond 40-foot from the edge of the BVW, for the placement of the two proposed houses, garages, decks and associated septic systems. Further, the majority of the proposed driveway access to these two new lots is physically located within 40-feet of the edge of the BVW. Under the Act, such significant alteration of the BVW affords the Commission an opportunity to deny the roadway. Under the Bylaw, such alteration of the jurisdictional BVW commands the Commission to deny the roadway and the project in its entirety. Likewise under the Bylaw, the buffer zone is a protected resource area.

In The Matter of: Priors Crossing, Inc., Docket 92-156 (Final Decision, May 16, 1996), the DEP has held that, "[m]ost important for this discussion, the regulations recognize that activity in the buffer zone to a BVW is likely to harm the BVW." Highlighting the importance of BVW buffer protection is the recent Wetlands Policy, 99-1, which provides "activities in the 100-foot buffer zone are sufficiently likely to alter a resource area . . . ." DEP Wetlands Program Policy 99-1. Moreover, the Bylaw, which is more stringent than the Act and its Regulations, regulates the buffer zone as an independent jurisdictional resource area in Section F2.

Since the last public hearing on the Angell NOI applications, significant events have transpired which underscore the unfeasibility of the proposed Angell residential projects. Significantly, the Commission voted on June 30, 1999 to deny the Foss/Dexter NOI application, for Lot C2 at 151 Pope Road. A copy of the June 30, 1999 Decision is enclosed as Attachment No. 1 for inclusion in the administrative record.

The Commission's decision in the Foss/Dexter matter is well articulated and well founded. For most if not all of the reasons the Commission rejected the proposed Foss/Dexter single-family residential project, the Commission must likewise deny the Angell NOI applications. The Commission's denial under the Act and the Bylaw for the Foss/Dexter project bears relevance to the Angell project given the similarities between the two applications.<sup>2</sup> However, the Angell NOI applications present even more compelling reasons to deny than did the Foss/Dexter NOI application, which only proposed to create one additional residential lot (Lot C2) from the existing 4.3 acre parcel, including without limitation the direct wetland alteration and the wildlife habitat

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<sup>2</sup> Both the Angell and the Foss/Dexter NOI applications involve projects which seek to create additional lots from an existing, improved residential parcel. The Angell NOI applications proposed to carve out two additional residential building lots, while the Foss/Dexter project sought only to create one additional lot from the existing, improved parcel. Both the Angell and Foss/Dexter project proposals involved significant alteration of the 100-foot Buffer Zones of jurisdictional wetlands.

issues identified by MNHESP. Through the Foss/Dexter denial, the Commission made the following determinations:

- (1) *The site is significant to many of the interests and values of the Act and the Bylaw. The proposed work is in a sensitive forested wetland with high wildlife habitat value in need of protection.*  
(Foss/Dexter decision, pp. 8, 11)

Applicability to Angell NOI: The above description applies equally, if not more so, to the Angell property. The high wildlife habitat values include two (2) species of special concern, at least one of which uses both wetland and upland territories as its habitat as well as a certified vernal pool. To the extent that the Commission appropriately determined that the Foss/Dexter projects were inappropriate in a "marginal upland portion", here too the Angell NOI applications seek nearly complete utilization of the BVW buffer zone without proper consideration for the vegetative community for whom the buffer is intended to protect and without regard for the rare and special status of two separate species, both of which rely upon the existing wetland resources at the site.

- (2) *The proposed work is an inappropriate development within a marginal upland portion of the Applicant's property that is surrounded by wetland resource areas.*  
(Foss/Dexter decision, pp. 8-9, 11)

Applicability to Angell NOI: The proposed Angell two-house project is even more compelling than the single-house project proposed by Foss/Dexter. If approved, there will remain virtually no undeveloped BVW buffer and upland at the 8 Springhill Road property.

- (3) *The Applicant's entire project is within the 100-foot buffer zone of two wetlands resource areas.*  
(Foss/Dexter decision, p. 11)

Applicability to Angell NOI: Here, the majority of the proposed driveway is within the 25-foot and 40-foot buffer. Likewise, the proposed dwelling units are fully within the 100-foot buffer, leaving only components of the septic systems outside the 100-foot buffer.

- (4) *In order to gain access to the proposed project area, the proposed driveway would violate the 25-foot "no-cut" and the 40-foot "no-structure" setbacks under the Bylaw and its Regulations.*  
(Foss/Dexter decision, p. 10, 11)

Applicability to Angel NOI: At the Angell Property, not only does the proposed driveway significantly violate the 25-foot "no-cut" and the 40-foot "no-structure" setbacks, but it also passes through delineated BVW. Here, the Applicant's representatives have alleged that Section F8.3 of the Bylaw, which establishes a 25-foot no cut setback and a 40-foot no build setback from the edge of resources areas, including without limitation BVW, are not applicable as the Bylaw contains a 0-foot setback for "structures necessary for upland access where reasonable alternative access is unavailable." The Applicant has taken the position that the driveway

through the BVW buffer is not subject to the 25-foot or 40-foot buffer setbacks, as the driveway access it necessary for upland access. The denied Foss/Dexter project also involved similar access through these local setbacks. In the Foss/Dexter application, it was determined that actual BVW buffer was approximately 10 feet away from the driveway. There, the Commission expressly ruled that: "[a]s presented in the applicant's project plans and NOI application, the proposed residential project requires waivers to both the 25-foot undisturbed natural vegetation and the 40-foot driveway roadway, structure setback under the Bylaw." (Foss/Dexter decision, p. 6). To the extent that less than 10-feet of buffer is not permitted by the Commission, it is abundantly clear that the driveway structure proposed by this Applicant is insupportable.

Notably, within the public hearing process, the Applicant's representative alleged that no waivers from Section F8.3 of the Bylaw was necessary. As the Commission stated in its Foss/Dexter denial decision, "[t]he Commission rejects the argument that the proposed driveway qualifies for a 0-foot setback under the Bylaw because access to upland already exists on the lot." Further, assuming that waivers are later sought by the Applicant, the Commission has already determined, through the Foss/Dexter denial, that a waiver request under Section F4.6 of the Bylaw is not warranted in a situation where the benefit of the waiver inures solely to the benefit of the Applicant and where jurisdictional resource areas will suffer harm if such waiver were approved.

- (5) *The Commission rejects the argument that the proposed driveway qualifies for a 0-foot setback under the Bylaw because access to upland already exists on the lot.*  
(Foss/Dexter Decision, p. 12)

Application to Angell NOI: The Applicant has taken this identical position in the present matter, and has not requested a waiver or hardship exemption. Accordingly, the Commission has correctly determined that the Applicant's stated position is incorrect as a matter of law. Further, as the Commission correctly noted in the Foss/Dexter decision, under the Bylaw the Commission is authorized to impose more stringent setbacks, should it determine that such additional protections are necessary.

- (6) *The project cannot be conditioned to meet the performance standard to protect the interests of the Act and the Bylaw. The wetland resource areas and the Buffer Zone will be impaired because the location of the driveway . . . and the entire project is within the buffer zone of both wetland resource areas.*  
(Foss/Dexter decision, p. 12)

Application to Angell NOI: Here, the performance standards likewise cannot be met. The wetland resource areas and the Buffer Zone (which is also a jurisdictional resource area under the Bylaw) are impaired by the location of the driveway, including its construction and subsequent use. Likewise, as with the Foss/Dexter project, the physical house structures are consumptive of nearly the remainder of the 100-foot buffer zone.

As a final matter, the Commission had requested in a prior public hearing on the Angell NOI a copy of the common scheme restriction language placed upon the Angell property. Attached

hereto as Attachment No. 2 is a copy of that portion of the deed containing the restrictive language. In pertinent part, it states:

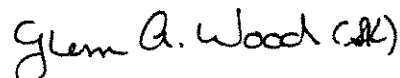
No subdivision of the said Lot 6 [the Angell lot] shall be made or permitted unless each lot resulting therefrom shall have an area of a least four (4) acres . . . .

According to the deed, the development restrictions are to remain in effect until the year 2016 or until an earlier date, as set forth in Chapter 184. Of relevance for the Commission's determination at this time, however, is the import of the above-quoted restriction. Specifically, the Angell lot as well as the other lots in the Spring Hill Road subdivision were required to maintain at least 4 acres of land for each parcel, implicitly recognizing the value of this area, rich in natural resources, and likewise recognizing the adverse impact of over-development.

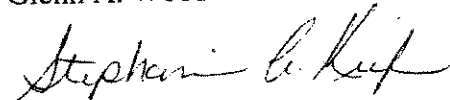
The Commission need not rest its decision on the language of the deed restriction. Instead, the Act and the Bylaw provide the standards that must be uniformly applied. The proposed two lot development from the existing Angell residence contradicts the performance standards of the Act and its Regulations, as well as DEP Wetlands Policy 99-1. Further, the Town of Acton has voted through Town Meeting to increase the stringency of buffer zone protection. Similarly, for these very same reasons, the Commission denied the Foss/Dexter NOI application to develop one additional lot on Pope Road. The Angell project must similarly be rejected.

Accordingly, the public hearing on these NOI applications should be closed and the Commission should summarily vote to deny these projects under the Act and the Bylaw. Based upon the materials submitted to the Commission, the identified protected resources and buffers that will be impacted by the proposed projects and based upon the amount of time in which the Commission has provided for the Applicant to modify her plans for these applications, it is our position that the Commission should issue a denial for both NOI applications under the Act and the Bylaw. As such, we respectfully request that the Commission deny the NOI applications without further continued hearing on the matter.

Sincerely yours,



Glenn A. Wood



Stephanie A. Kiefer

cc: Steven R. Graham, Esq.  
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